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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/049,246

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Jeffrey S. Hamilton

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08/09/2007

TECHNOLOGY, PATENTS AND LICENSING, INC./PRIME
2003 SOUTH EASTON RD
SUITE 208
DOYLESTOWN, PA 18901

EXAMINER

CZEKAJ, DAVID J

ART UNIT

PAPER NUMBER

2621

MAIL DATE

DELIVERY MODE

08/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/049,246

Applicant(s)

HAMILTON, JEFFREY S.

Examiner

Dave Czekaj

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6,8,10-13,15,25,31,32,34,36,37 and 41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,8,10-13,15,25,31,32,34,36,37 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 3, 10-11, 13, 31-32, 34, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tahara et al. (6529550), (hereinafter referred to as "Tahara") in view of Robinett et al. (6351474), (hereinafter referred to as "Robinett") in further view of Berstis et al. (7089194), (hereinafter referred to as "Berstis").

Regarding claim 1, Tahara discloses an apparatus that relates to a coded stream-splicing device (Tahara: column 1, lines 10-12). This apparatus comprises "computing a rate profile associated with a stream" (Tahara: column 12, lines 35-40, wherein the rate profile is the target bit rate), "compressing the digital media advertisement according to the computed rate profile" (Tahara: column 23, line 55 – column 24, line 10, wherein the digital media advertisement is the commercial, which is encoded according to the bit rate), and "inserting the compressed digital media advertisement in the stream at an advertising opportunity" (Tahara: column 24, lines 11-15, wherein the advertisement is the

commercial which is spliced into the stream). However, this apparatus lacks the pre-designating and specifics of the rate profile as claimed. Robinett teaches that every program has a predetermined or pre-designated bit rate and is intended to be decoded at that bit rate (Robinett: column 6, lines 15-25). Berstis teaches that it would be useful to have a method for directing advertisements to particular segments of users (Berstis: column 2, lines 50-53). To help alleviate this, Berstis discloses "wherein the rate profile describes the available bandwidth over time and comprises a time varying profile from the start to end point" (Berstis: column 7, lines 15-35, wherein the profile is the session characterization information). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to take the apparatus disclosed by Tahara, implement the pre-designated bit rate taught by Robinett, and add the rate profile taught by Berstis in order to prevent underflow and overflow conditions in the buffers.

Regarding claim 3, Tahara discloses "the predetermined rate profile comprises a maximum bit rate" (Tahara: column 12, lines 60-65, wherein the maximum bit rate is the optimum bit rate).

Regarding claims 10 and 31, note the examiners rejection for claim 1, and in addition, Tahara discloses determining a second bit rate profile for a second advertising opportunity" (Tahara: column 12, lines 4-6, wherein the second advertisement is the advertisements located on the plurality of channels).

Regarding claim 11, note the examiners rejection for claim 1.

Regarding claim 13, note the examiners rejection for claims 5 and 10.

Regarding claim 32, Tahara discloses "the rate profile is based on a predetermined max bit rate" (Tahara: column 12, lines 35-40, wherein the rate profile is the target bit rate).

Regarding claim 34, Tahara discloses "the predetermined rate profile comprises a start and end point" (Tahara: column 13, lines 29-31, wherein the start and end point are included in the length of data).

Regarding claim 41, note the examiners rejection for claim 1, and in addition, Tahara discloses "a statistical multiplexor capable of determining an available bandwidth" (Tahara: column 12, lines 7-9).

2. Claims 8, 15, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tahara et al. (6529550), (hereinafter referred to as "Tahara") in view of Robinett et al. (6351474), (hereinafter referred to as "Robinett") in further view of Berstis et al. (7089194), (hereinafter referred to as "Berstis") in further view of Seo et al. (6208688), (hereinafter referred to as "Seo").

Regarding claims 8 and 36, note the examiners rejection for claim 1, and in addition, claims 8 and 36 differ from claim 1 in that claims 8 and 36 further require the time varying profile to be modeled as a piecewise linear model. Seo teaches that a piecewise linear model can help prevent deterioration (Seo: column 9, lines 24-45). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the

piecewise linear model taught by Seo in order to obtain an apparatus that provides the highest possible picture quality.

Regarding claim 15, Seo discloses "the first and second bit rate profiles have first and second high bit rate portions which are staggered" (Seo: figures 3A-3B, wherein the bit rates are shown to be staggered).

3. Claims 6, 25, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tahara et al. (6529550), (hereinafter referred to as "Tahara") in view of Robinett et al. (6351474), (hereinafter referred to as "Robinett") in further view of Berstis et al. (7089194), (hereinafter referred to as "Berstis") in further view of Zhang et al. (6611624), (hereinafter referred to as "Zhang").

Regarding claim 6, note the examiners rejection for claim 1, and in addition, claim 6 differs from claim 1 in that claim 6 further requires the rate profile to include insertion instructions. Zhang teaches that using insertion instructions helps prevent buffer underflow (Zhang: column 12, lines 19-24, wherein the insertion instructions are the instructions on when either the null packets or stuffing bytes should be added to the stream). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the insertion instructions taught by Zhang in order to prevent buffer underflow situations.

Regarding claim 25, note the examiners rejection for claim 10, and in addition, Tahara discloses "encoding the advertisements at an aggregate bit rate profile which is less than or equal to the sum of the first and second profiles"

(Tahara: column 12, lines 60-65, wherein the aggregate bit rate is the target bit rate, wherein the sum of the first and second profiles or the stream does not exceed the transmission rate).

Regarding claim 37, Zhang discloses that "null cells are used to insure the minimum bit rate is achieved" (Zhang: column 12, lines 17-22, wherein the null cells are the null data).

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tahara et al. (6529550), (hereinafter referred to as "Tahara") in view of Robinett et al. (6351474), (hereinafter referred to as "Robinett") in further view of Berstis et al. (7089194), (hereinafter referred to as "Berstis") in further view of Radhakrishnan et al. (6049526), (hereinafter referred to as "Radhakrishnan").

Regarding claim 12, note the examiners rejection for claim 1, and in addition, claim 12 differs from claim 1 in that claim 12 further requires providing the sum of the profiles. Radhakrishnan teaches providing the instantaneous sum of the first and second bitrate profiles (Radhakrishnan: column 13, lines 25-30, wherein the profiles are the sub-profiles). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the sub-profile summing taught by Radhakrishnan in order to determine the bandwidth necessary for a successful transmission.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Czekaj whose telephone number is (571) 272-7327. The examiner can normally be reached on Mon-Thurs and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on (571) 272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2621

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DJC

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TC 2600